

June 2, 2006

Mr. Arthur Palkowitz  
Legislative Mandates Specialist  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103-8363

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

Re: **Draft Staff Analysis and Hearing Date**  
**Proposed Parameters and Guidelines**  
*Pupil Expulsions from School: Additional Hearing Costs for*  
*Mandated Recommendations of Expulsion for Specified Offenses*  
San Diego Unified School District, Claimant  
05-PGA-04 (CSM-4455)  
Education Code Section 48915, subdivisions (a) and (b)  
Statutes 1993, Chapters 1255 and 1256  
-and-  
Education Code Section 48918  
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;  
Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;  
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;  
Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

Dear Mr. Palkowitz:

The draft staff analysis and proposed parameters and guidelines for the above-entitled test claim are enclosed for your review and comment. The proposed parameters and guidelines are for the fiscal year 1993-94 through 2005-06 reimbursement periods and are based on San Diego's proposed reasonable reimbursement methodology for the additional hearing costs.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by July 5, 2006. The Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. To request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Mr. Arthur Palkowitz

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## **Hearing**

The proposed parameters and guidelines are tentatively set for hearing on Friday, July 28, 2006, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 14, 2006. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

## **Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions on the above, please contact me at (916) 323-8210.

Sincerely,

PAULA HIGASHI

Executive Director

Enc. Draft Staff Analysis

Cc: Mr. Jose Gonzalez  
Ms. Susan Oie  
Ms. Diana McDonough

ITEM \_\_\_\_

**DRAFT STAFF ANALYSIS**

**PROPOSED PARAMETERS AND GUIDELINES**

Education Code Section 48915, subdivisions (a) and (b)

Statutes 1993, Chapters 1255 ( and 1256

Education Code Section 48918

Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;

Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;

Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;

Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

*Pupil Expulsions from School: Additional Hearing Costs for  
Mandated Recommendations of Expulsion for Specified Offenses*

05-PGA-04 (CSM-4455)

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**EXECUTIVE SUMMARY**

These proposed parameters and guidelines are necessary to implement the Supreme Court Decision in the *Pupil Expulsions* case and to allow school districts to be reimbursed for additional hearing costs for mandated recommendations of expulsion. (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*)). See Exhibit A.

Since school districts have already filed reimbursement claims for actual costs incurred from October 11, 1993 through June 30, 2005, and estimated reimbursement claims for fiscal year 2005-2006, staff proposes adoption of a separate set of parameters and guidelines for claiming the *additional expulsion hearing costs from 1993-1994 through 2005-2006*. San Diego Unified School District proposed a *reasonable reimbursement methodology* which consists of uniform cost allowances for the additional hearing costs allowed by the Supreme Court decision. The cost allowance is based on claimant and Los Angeles Unified School District's actual expulsion hearing costs for 2005-2006. In order to determine cost allowances for the prior years, the 2005-2006 cost allowances are adjusted back to fiscal year 1993-1994 by the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as determined by the Department of Finance.<sup>1</sup> Adoption of this reasonable reimbursement methodology will allow school districts to claim and be reimbursed for additional hearing costs for mandated recommendations of expulsion.

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<sup>1</sup> Government Code section 17523.

## Background

In March 1994, claimant San Diego Unified School District (Claimant) filed a test claim with the Commission on State Mandates (Commission). As amended in April 1995, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. After hearings in 1996 and 1997, the Commission adopted its Statement of Decision in May 1997, and on August 10, 1998, issued a corrected Statement of Decision. Among other things, the Commission determined that Education Code section 48915 mandated immediate suspensions, recommendations for expulsion, and expulsions for specified offenses. However, the Commission did not approve reimbursement for the due process hearing costs resulting from the state-mandated recommendations for expulsion. The Commission further determined that no subvention was required for costs of voluntary expulsions. The reimbursable activities were included in consolidated parameters and guidelines for *Suspensions, Expulsions, and Expulsion Appeals*, adopted on August 20, 1998.

The claimant challenged the Commission's decision, and in October 1999, filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. For voluntary expulsions, claimant alleged all costs for expulsion proceedings to the extent such proceedings exceeded federal law requirements. The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

“We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a ‘higher level of service’ under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.

“We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the requirements of federal law – are reimbursable. [ . . . ] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.” (Emphasis in original.)

(*San Diego Unified School District, supra*, 33 Cal.4th 859, 867)<sup>2</sup>

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<sup>2</sup> See Exhibit A.

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*. The Supreme Court decision requires the state to reimburse school districts for “all resulting hearing costs—even those costs attributable to procedures required by federal law” for mandated “recommendations of expulsion for certain offenses,” back to the initial reimbursement period for the *Expulsions* test claim (1993).

On May 26, 2005, the Commission on State Mandates (“Commission”) adopted its Amended Statement of Decision consistent with the Supreme Court’s ruling in *San Diego Unified School District*.<sup>3</sup>

On July 27, 2005, Commission staff convened a pre-hearing conference to establish the schedule for adoption of the parameters and guidelines to implement the Amended Statement of Decision.

On October 3, 2005, the claimant submitted proposed amendments to the Parameters and Guidelines on this consolidated mandated program.<sup>4</sup> On October 13, 2005, this proposal was mailed to interested parties for review and comment. Written comments were received from the State Controller’s Office on November 18, 2005.<sup>5</sup> The Department of Finance requested and was granted an extension of time to file comments on January 13, 2006. However, no comments were filed.

On March 27, 2006, the claimant resubmitted the proposed amendments to the Parameters and Guidelines to make technical corrections. On April 4, 2006, claimant’s resubmission was deemed complete, as a replacement for the original proposal. In order to expedite this proceeding, staff requested that parties and interested parties defer filing comments until the draft staff analysis and proposed amendments are issued for review and comment.

#### State Controller’s Office Comments

On November 18, 2005, the State Controller’s Office (SCO) filed comments on the original proposed amendments to the consolidated parameters and guidelines.

Title Page. The SCO recommends that Statutes 2002, Chapter 492 be added to the description of *Pupil Suspensions from School* – CSM-4456 and Statutes 2001, Chapter 116, be added to the description of the *Pupil Expulsions from School* - CSM-4455.

Section I. Summary of the Mandates. The SCO recommends that the section title be modified to conform to current parameters and guidelines and recommends changes to sections A and B.

##### A. *Pupil Suspensions from School*.

SCO also recommends the addition of a new paragraph on amendments made to Education Code section 48911 by Statutes 2002, chapter 492.

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<sup>3</sup> See Exhibit B.

<sup>4</sup> See Exhibit C.

<sup>5</sup> See Exhibit D.

## B. *Pupil Expulsions*

SCO recommends deleting reference to test claim statutes (Chapters 1255 and 1256, Statutes 1993) and inserting text of Education Code section 48915, as amended by Statutes 2001, chapter 116, section 2.

Section IV. Period of Reimbursement. The SCO recommends technical amendments to the first paragraph and the second paragraph. SCO recommends the addition of a new third paragraph, as follows:

All mandated cost claims that were submitted to the SCO through September 29, 2002, including amendments thereof, only have to meet the threshold of being in excess of \$200. Beginning on September 30, 2002, any mandated cost claims submitted to SCO must be in excess of \$1,000 according to GC § 17564 subdivision (a).

Section V. Reimbursable Activities. The SCO recommends the following amendments:

C. Recommendation of Expulsion. SCO recommends deletion of “firearm,” “explosive,” “sale of any controlled substance,” and the addition of “possession of any controlled substance,” and “assault or battery ... upon any school employee” from offenses that require preparation of a report to the school district governing board concerning the principal’s or superintendent’s recommendation to expel a pupil.

D. Expulsion Hearing Procedural Requirements. The SCO recommends adding a specific reference to offenses listed in Section V. subsection C.

H. Application by Expelled Pupil to Attend New District. SCO proposes replacing list of offenses occurring from July 1, 1993 to December 31, 1993 with a reference to Section I. Summary and Source of the Mandate, B. *Pupil Expulsions*.

Section X. Remedies before the Commission. The SCO recommends changing a citation for requests to amend parameters and guidelines from Government Code section 17557, subdivision (d), to subdivision (a).

Staff reviewed State Controller’s comments on claimant’s original proposed amendments to the consolidated parameters and guidelines. In this analysis, staff will consider and respond only to those recommendations that are applicable to these proposed parameters and guidelines for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*. The SCO comments and recommendations will also be addressed in the Staff Analysis and Proposed Amendments to the Consolidated Parameters and Guidelines for *Pupil Suspensions, Pupil Expulsions from School, and Expulsion Appeals*. (CSM-4455, 4456, and 4463).

Since school districts have already filed reimbursement claims for actual costs incurred from October 11, 1993 through June 30, 2005, and estimated reimbursement claims for fiscal year 2005-2006, staff proposes adoption of two separate sets of parameters and guidelines for claiming the *additional expulsion hearing costs*. Each set of parameters and guidelines will be presented as a separate agenda item and staff analysis.

1. ***Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses***. (Reimbursement for fiscal years 1993-1994 through 2005-2006) School districts may claim additional hearing costs based on a reasonable reimbursement methodology proposed by the San Diego Unified School District. San Diego proposes uniform cost allowances for additional hearing costs

based on fiscal year 2005-2006 costs. Commission staff has applied the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as determined by the Department of Finance<sup>6</sup> to the 2005-2006 costs back to 1993.

2. ***Consolidated Parameters and Guidelines for Suspensions, Expulsions, and Expulsion Appeals.*** (Reimbursement begins for fiscal year 2006-2007 claims) Amendments would include new reimbursable activities based on Supreme Court Decision and amended Statement of Decision, claimant's proposed reasonable reimbursement methodology for expulsion hearing costs, and updated language in recently adopted parameters and guidelines.

This agenda item addresses the proposed amendments for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*.

Staff reviewed claimant's original and resubmitted proposals, the modified statement of decision, and the State Controller's comments on the original proposed amendments to the consolidated parameters and guidelines.

The following substantive changes have been made by staff to claimant's proposed parameters and guidelines in order to develop these parameters and guidelines for *Additional Hearing Costs*, as described above.

### **Title Page**

The parameters and guidelines to implement the amended Statement of Decision are entitled: "*Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*."

Since claimant's proposed parameters and guidelines address reimbursement for additional hearing costs resulting from the Supreme Court Decision, citations are made to the relevant Education Code sections and test claim statutes instead of all statutes included in the consolidated parameters and guidelines for *Suspensions, Expulsions, and Expulsion Appeals*.

### **Section I. Summary of the Mandate**

This section describes the Supreme Court's ruling in *San Diego Unified School District*. The Supreme Court decision requires the state to reimburse school districts for increased hearing costs incurred for mandatory recommendations of expulsion for specified offenses.

### **Section III. Period of Reimbursement**

This section clearly specifies that the proposed parameters and guidelines apply to the specified reimbursement period of October 11, 1993 through June 30, 2006.

### **Section IV. Reimbursable Activities**

Substantive language on filing actual cost reimbursement claims is deleted from claimant's proposed parameters and guidelines because it is not relevant to reimbursement based on a *reasonable reimbursement methodology*. A *reasonable reimbursement methodology* is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs pursuant to Government Code sections 17518.5 and 17557.

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<sup>6</sup> Government Code section 17523.

Only one technical change is made to the description of additional reimbursable activities, as proposed by claimant, as explained below in footnote 7.

Staff reviewed each of the additional activities proposed by claimant and finds that the following additional reimbursable activities are consistent with the Supreme Court Decision; the Commission's modified Statement of Decision, and the test claim statutes. Therefore, staff finds that these activities are state-mandated and reasonably necessary to comply with the state-mandated expulsions hearings pursuant to Education Code section 48918.

### Expulsion Hearings

If the expulsion hearing is for one of the following offenses:

- causing serious physical injury to another person, except in self defense;
- possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 1053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- robbery or extortion.

Then the following additional activities are reimbursable:

#### 1. Preparation for Expulsion Hearing

- Preparing and reviewing documents to be used during the expulsion hearing.
- Arranging hearing dates and assigning panel members and translators as needed.

#### 2. Conducting Expulsion Hearing

- Attendance of the hearing officer or review panel and other district employees required to attend the expulsion hearing.<sup>7</sup>

#### 3. Hearing Officer or Panel's Expulsion Recommendation to the Governing Board

- Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.

#### 4. Record of Hearing

- Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceeding to be made.

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<sup>7</sup> Staff added "hearing officer or" to this reimbursable activity. This addition makes the activity consistent with Education Code section 48918, which authorizes use of hearing officers or panels to hold due process expulsion hearings.



## Section V. Claim Preparation: Reasonable Reimbursement Methodology

Substantive language on filing actual cost reimbursement claims is deleted because reimbursement for the additional expulsions hearing costs is based on a *reasonable reimbursement methodology* in lieu of payments of total actual costs incurred.

This section includes language for adoption of a reasonable reimbursement methodology and clarification of the unit cost allowances. Most of this language is excerpted from the statutory definition and was previously adopted by the Commission in the *Annual Parent Notification Parameters and Guidelines Amendments* (05-PGA-12 (CSM-4461, 4445, 4453, 4462, 4474, 4488, 97-TC-24, 99-TC-09, and 00-TC-12)).

According to claimant, the uniform cost allowance is based on cost data collected by Los Angeles Unified School District and San Diego Unified School District that accounted for 20% of the statewide mandatory recommendations for expulsion in fiscal year 2003-2004.

School districts annually report to the Department of Education how many students were recommended for expulsion, expelled, “mandatorily” expelled, and whose orders were suspended. Statewide, county, and district totals are available on the CDE website for the period from 2000-2001 through 2003-04.<sup>8</sup>

The claimant originally proposed uniform cost allowances in October 2005. The comment period was extended to January 13, 2006 at the request of the Department of Finance. However, no comments on the cost allowances were filed by any state agency or interested party.

Staff reviewed these allowances and compared them to the costs of due process hearings held by a state agency. A comparison to state agency costs is relevant because Education Code section 48918, subdivision (d) authorizes governing boards to contract with the county hearing officer or with the State Office of Administrative Hearings for a hearing officer to conduct expulsions hearings. State agencies in the Department of Consumer Affairs contract with the State Office of Administrative Hearings for a hearing officer to conduct license revocation hearings under the Administrative Procedure Act.

For fiscal year 2005-2006, state agencies are charged the following rates for due process hearings for professional license revocations:

<u>State Attorney General</u>			
Deputy Attorney General	\$146/hour	Paralegal	\$ 92/hour
<u>State Office of Administrative Hearings</u>			
Hearing Officer	\$176/hour	Staff Counsel	\$102/hour
Filing Fee	\$ 66/case		

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<sup>8</sup> <http://data1.cde.ca.gov/dataquest/Expulsion>. See Exhibit E for 2001-02 Expulsion Information Reporting Form for San Diego City Unified School District.

The total amount proposed by claimants for the direct and indirect costs of all reimbursable components is \$587.16. For a due process hearing held by a state agency, approximately the same amount (\$594.50) would pay for the following state services:

CLAIMANT'S PROPOSED New Reimbursable Activities/Cost Allowance Fiscal Year 2005-2006	STAFF'S COMPARISON State Agency Costs For Due Process Hearing
IV. A.1 Preparation for Expulsion Hearing <ul style="list-style-type: none"> <li>Preparing and reviewing documents to be used during the expulsion hearing.</li> <li>Arranging hearing dates and assigning panel members and translators as needed.</li> </ul> Allowance: \$157.	Deputy Attorney General for .75 hour  Paralegal .50 hour  Total - \$ 155.50
IV. A.2. Conducting Expulsion Hearing <ul style="list-style-type: none"> <li>Attendance of the <u>hearing officer or</u> review panel and other district employees required to attend the expulsion hearing.</li> </ul> Allowance: \$196.16	<u>30-Minute Hearing</u> Deputy Attorney General .50 hour Paralegal - .50 hour Administrative Law Judge .50 hour  Total: \$207.
IV. A.3 Hearing Officer or Panel's Expulsion Recommendation to the Governing Board <ul style="list-style-type: none"> <li>Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.</li> </ul> Allowance: \$232.00	Administrative Law Judge - 1.3 hours  Or  Staff Counsel 2.2 hours  Total: \$232
IV. A.4 Record of Hearing Allowance: \$2.00	
Total \$587.16	\$594.50

Based on this review of comparable costs and activities for state agency due process hearings, with administrative law judge recommendations being made to state professional licensing boards, staff finds that claimant's proposed uniform cost allowances for the additional hearing activities for mandated recommendations of expulsions are reasonable and should be adopted.

## Sections VI - IX

The remaining sections are updated to make the language consistent with adopting a reasonable reimbursement methodology and language in recently adopted parameters and guidelines.

## **Section X. Legal and Factual Basis**

The following new language has been developed to conform to the facts of this case:

The Statement of Decision, as modified pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, is legally binding on all parties with respect to statutes claimed and determined by the Commission on State Mandates and provides the legal and factual basis for the parameters and guidelines. However, the amended Statement of Decision does not address subsequent amendments to the test claim statutes. The support for the legal and factual findings is found in the administrative record for the test claim and the Supreme Court decision. The administrative record, including the Statement of Decision, as modified, and the Supreme Court decision is on file with the Commission.

### **Staff Recommendation**

Staff recommends that the Commission adopt staff's proposed parameters and guidelines for the *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*. (Reimbursement Period October 11, 1993 through June 30, 2006.)

Staff also recommends the Commission authorize staff to make necessary technical changes or corrections.

## **CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY COMMISSION STAFF**

Education Code Section 48915  
Statutes 1993, Chapters 1255 and 1256

Education Code Section 48918  
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;  
Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;  
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;  
Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

*Pupil Expulsions from School:*  
*Additional Hearing Costs for Mandatory Recommendations for Expulsion*

05-PGA-04 (CSM-4455)  
Period of Reimbursement: October 11, 2003- June 30, 2006

### **I. Summary of the Mandate**

In March 1994, claimant San Diego Unified School District (Claimant) filed a test claim with the Commission on State Mandates (Commission). As amended in April 1995, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. After hearings in 1996 and 1997, the Commission adopted its statement of decision in May 1997, and on August 10, 1998, issued a corrected statement of decision. Among other things, the Commission determined that Education Code section 48915 mandated immediate suspensions, recommendations for expulsion, and expulsions for specified offenses. However, the Commission did not approve reimbursement for the due process hearing costs resulting from the state-mandated recommendations for expulsion. The Commission further determined that no subvention was required for costs of voluntary expulsions. The reimbursable activities were included in consolidated parameters and guidelines for *Suspensions, Expulsions, and Expulsion Appeals*, adopted on August 20, 1998.

The claimant challenged the Commission's decision, and in October 1999, filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. For voluntary expulsions, claimant alleged all costs for expulsion proceedings to the extent such proceedings exceeded federal law requirements. The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

"We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a 'higher level of service' under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.

"We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the

requirements of federal law – are reimbursable. [ . . . ] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.” (Emphasis in original.)

(*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*).)

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*. The Supreme Court decision requires the state to reimburse school districts for “all resulting hearing costs—even those costs attributable to procedures required by federal law” for mandated “recommendations of expulsion for certain offenses,” back to the initial reimbursement period for the *Expulsions* test claim. (1993)

On May 26, 2005, the Commission on State Mandates (“Commission”) adopted its amended Statement of Decision consistent with the Supreme Court’s ruling in *San Diego Unified School District*.

## **II. Eligible Claimants**

Any “school district,” as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.<sup>9</sup>

## **III. Period of Reimbursement**

These parameters and guidelines are operative for initial reimbursement claims filed for increased costs beginning on October 11, 1993 through June 30, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

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<sup>9</sup> Language proposed by claimant.

3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### **IV. Reimbursable Activities**

The claimant is only allowed to claim and be reimbursed for increased costs of reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of a mandate.

For each eligible claimant, the following activities are reimbursable:

##### **A. Expulsion Hearings**

If the expulsion hearing is for one of the following offenses:

- causing serious physical injury to another person, except in self defense;
- possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Seciton 1053) of Division 10 of Health and Safety Code, except for the first offense for the sale oof not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- robbery or extortion.

Then the following additional activities are reimbursable:

##### **1. Preparation for Expulsion Hearing**

- Preparing and reviewing documents to be used during the expulsion hearing.
- Arranging hearing dates and assigning panel members and translators as needed.

##### **2. Conducting Expulsion Hearing**

- Attendance of the review panel and other district employees required to attend the expulsion hearing.

##### **3. Hearing Officer or Panel's Expulsion Recommendation to the Governing Board**

- Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.

##### **4. Record of Hearing**

- Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceeding to be made.

Costs for *Pupil Suspensions, Expulsions, and Expulsion Appeals* (CSM-4456, 4455, 4463) that were claimed for fiscal years 1993-1994 through 2005-2006 pursuant to the State Controller's claiming instructions for Program 176 may not be claimed and are not reimbursable under these parameters and guidelines.

## **V. Claim Preparation: Reasonable Reimbursement Methodology**

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV. above.*

### **A. Reasonable Reimbursement Methodology**

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

#### Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
  - (1) the total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
  - (2) for 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- (b) Whenever possible, a *reasonable reimbursement methodology* shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.
- (c) A reasonable reimbursement methodology may be developed by any of the following:
  - (1) The Department of Finance.
  - (2) The Controller.
  - (3) An affected state agency.
  - (4) A claimant.
  - (5) An interested party,

### **B. Uniform Cost Allowances and Formula for Reimbursable Activities**

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities A. 1-4, as described under Section IV, Reimbursable Activities, and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities, A. 1-4 are *as follows*:

Reimbursable Component	Uniform Cost Allowances Fiscal Year 2005-2006
IV. A.1 Preparation for Expulsion Hearing	\$157.00
IV. A.2. Conducting Expulsion Hearing	\$196.16
IV. A.3 Hearing Officer or Panel's Expulsion Recommendation to the Governing Board	\$232.00
IV. A.4 Record of Hearing	\$2.00
Total	\$587.16

Uniform cost allowances for Fiscal Years 1993-94 through 2004-2005, shall be determined by adjusting the uniform cost allowance for Fiscal Year 2005-2006 by the Implicit Price Deflator referenced in Government Code section 17523. See attachment for the uniform cost allowances for Fiscal Years 1993-94 through 2004-2005.

## 2. Formula

Reimbursement for Section IV A. 1-4 is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may still claim increased costs incurred for Section IV.A.1, Preparation for Expulsion Hearing.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs based on this reasonable reimbursement methodology filed by a local agency or school district pursuant to this chapter<sup>10</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

School districts must retain documentation which supports the total number of mandatory expulsions initiated and hearings conducted during the period subject to audit.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenues and reimbursements the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

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<sup>10</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.



## **VIII. STATE CONTROLLER’S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision, as modified pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, is legally binding on all parties with respect to statutes claimed and determined by the Commission on State Mandates and provides the legal and factual basis for the parameters and guidelines. However, the Amended Statement of Decision does not address subsequent amendments to the test claim statutes. The support for the legal and factual findings is found in the administrative record for the test claim and the Supreme Court decision. The administrative record, including the Statement of Decision, as modified, and the Supreme Court decision is on file with the Commission.

Item       

**DRAFT STAFF ANALYSIS**  
**PROPOSED AMENDMENTS**  
**CONSOLIDATED PARAMETERS AND GUIDELINES**

*Pupil Suspensions, Expulsions, and Expulsion Appeals*  
05-PGA-04 (CSM-4455, 4456, and 4463)

*Pupil Suspensions from School* - CSM-4456

Education Code Section 48911, subdivisions (b) and (e)  
Statutes 1977, Chapter 965; Statutes 1978, Chapter 668  
Statutes 1980, Chapter 73; Statutes 1983, Chapter 498  
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

*Pupil Expulsions from School* - CSM-4455

Education Code Sections 48915, subdivisions (a) and (b),  
48915.1, 48915.2, 48916 and 48918  
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;  
Statutes 1978, Chapter 668; Statutes 1982, Chapter 318;  
Statutes 1983, Chapter 498; Statutes 1984, Chapter 622;  
Statutes 1987, Chapter 942; Statutes 1990, Chapter 1231;  
Statutes 1992, Chapter 152; Statutes 1993, Chapters 1255, 1256; 1257; and,  
Statutes 1994, Chapter 146

*Pupil Expulsion Appeals* - CSM-4463

Education Code Sections 48919, 48921-48924  
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;  
Statutes 1978, Chapter 668; and Statutes 1983, Chapter 498

Period of Reimbursement: Beginning July 1, 2006

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**EXECUTIVE SUMMARY**

The Commission on State Mandates adopted three related Statements of Decision on the pupil disciplinary process: *Pupil Suspensions from School*, *Pupil Expulsions from School*, and *Pupil Expulsion Appeals* and consolidated the parameters and guidelines for each program so there would be one set of claiming instructions for the three test claim decisions.

The consolidated parameters and guidelines must be amended to implement the Supreme Court Decision in the *San Diego Unified School District v. Commission on State Mandates* (2004) 33

Cal.4th 859, 867 (*San Diego Unified School District*) case. The Supreme Court decision requires the state to reimburse school districts for “all resulting hearing costs – even those costs attributable to procedures required by federal law” for mandated “recommendations of expulsion for certain offenses.” In the previous agenda item, the Commission will consider proposed parameters and guidelines to reimburse school districts for their additional hearing costs for the period for fiscal years 1993-1994 through 2005-06. The proposed *settlement* parameters and guidelines include a reasonable reimbursement methodology. The same reimbursement methodology is incorporated into the proposed amendments to the consolidated parameters and guidelines.

Since school districts have already filed reimbursement claims for estimated costs incurred for fiscal year 2005-06, staff recommends that claimant's proposed amendments to the consolidated parameters and guidelines, as modified by Commission staff, be effective for the reimbursement period beginning on July 1, 2006.

### **Staff Recommendation**

Staff recommends that the Commission adopt claimant’s proposed amendment of Consolidated parameters and guidelines for *Pupil Suspensions from School*, *Pupil Expulsions from School*, and *Pupil Expulsion Appeals*, as modified by staff, effective July 1, 2006. Staff also recommends the Commission authorize staff to make technical, non-substantive changes as may be necessary.

## **Background**

On May 26, 2005, the Commission on State Mandates (“Commission”) adopted its Amended Statement of Decision consistent with the Supreme Court’s ruling in *San Diego Unified School District*.<sup>1</sup>

On July 27, 2005, Commission staff convened a pre-hearing conference to establish the schedule for adoption of the parameters and guidelines to implement the Amended Statement of Decision.

On October 3, 2005, San Diego Unified School District (Claimant), submitted proposed amendments to the Parameters and Guidelines on this consolidated mandated program.<sup>2</sup> On October 13, 2005, this proposal was mailed to interested parties for review and comment. Written comments were received from the State Controller’s Office (SCO) on November 18, 2005.<sup>3</sup> Staff addresses the SCO comments below.

The Department of Finance requested and was granted an extension of time to file comments on January 13, 2006. However, no comments were filed.

On March 27, 2006, San Diego Unified School District resubmitted the proposed amendments to the Parameters and Guidelines to make technical corrections.

On April 4, 2006, claimant’s resubmission was deemed complete, as a replacement for the original proposal. In order to expedite this proceeding, staff requested that parties and interested parties defer filing comments until the draft staff analysis and proposed amendments are issued for review and comment.<sup>4</sup>

On June 2, 2006, Commission staff issued the proposed amendments to the consolidated parameters and guidelines.

## **Staff Analysis**

Staff reviewed claimant’s original and resubmitted proposals, the modified statement of decision, and the SCO’s comments on the original proposed parameters and guidelines amendment.

### *Title Page*

The SCO recommends that Statutes 2002, Chapter 492 be added to the list of statutes in *Pupil Suspensions from School* (CSM-4456) and Statutes 2001, Chapter 116, be added to the list of statutes in *Pupil Expulsions from School* (CSM-4455).

Staff finds that neither of these statutes was pled or determined by the Commission in the original statements of decision. Therefore, staff finds that the request to add these statutes must be denied.

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<sup>1</sup> See Exhibit B of Item \_\_\_\_

<sup>2</sup> See Exhibit C of Item \_\_\_\_

<sup>3</sup> See Exhibit D of Item \_\_\_\_

<sup>4</sup> See Exhibit E of Item \_\_\_\_

### *Section I. Summary of the Mandate*

The SCO recommends that the section title be modified to conform to current parameters and guidelines. Staff agrees. Based on the text in former Sections I and II (Summary of the Source of the Mandate and Commission on State Mandates Decisions) of the parameters and guidelines, staff has developed new text to conform to current parameters and guidelines.

#### *A. Pupil Suspensions from School.*

SCO also recommends the addition of a new paragraph on amendments made to Education Code section 48911 by Statutes 2002, chapter 492. The new paragraph would state:

Chapter 492, Statutes of 2002, amended Education Code section 48911, subdivision (b) to have the suspension preceded by an informal conference conducted by the principal, principal's designee, or the superintendent of schools between the pupil and whenever practical, the teacher, supervisor or school employee. The pupil will be informed of the reason for suspension and given the opportunity to present his or her version and evidence in his or her defense; and subdivision (c) to have the school employee report the suspension to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board.

The statement of decision on *Pupil Suspensions from School* (CSM-4456) was adopted on December 19, 1996. The last statute pled and determined in this test claim is Statutes 1987, chapter 134.

Staff finds that the 2002 amendment was not pled or determined by the Commission in the original Statement of Decision, and therefore, the addition of this new paragraph must be denied.

#### *B. Pupil Expulsions from School*

This section is updated to conform to the amended Statement of Decision, consistent with the Supreme Court's ruling in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4<sup>th</sup> 859, 867 (*San Diego Unified School District*.) The Supreme Court decision requires the state to reimburse school districts for increased hearing costs incurred for specified mandatory recommendations for expulsion.

SCO recommends deleting references to Statutes 1993, chapters 1255 and 1256, , and appears to have added references to Statutes 2001, chapter 116, section 2, and modified text. First, Statutes 1993, chapters 1255 and 1256, cannot be deleted because they added the new requirements for mandatory suspensions and expulsions and were determined in the original *Pupil Expulsions from School* test claim. Therefore, staff finds that the proposed amendment must be denied.

SCO also recommends updating the list of offenses for mandatory recommendations for expulsion to the verbatim text of Education Code section 48915, as amended by Statutes 2001, chapter 116. Staff finds that the 2001 statute was not pled or determined by the Commission in the *Pupil Expulsions from School* test claim, and therefore, the proposed amendments must be denied.

### *Section III. Period of Reimbursement*

SCO proposes technical amendments to this section. Staff agrees that this section must be updated. However, claimant and staff propose amendments to make this section consistent with the language in recently adopted parameters and guidelines. Staff also proposes adding a sentence to specify July 1, 2006, as the effective reimbursement period for the proposed amendments to the consolidated parameters and guidelines.

### *Section IV. Reimbursable Activities*

Staff proposes amendments to make this section consistent with the language in recently adopted parameters and guidelines. SCO also proposes technical changes to the first and second paragraphs.

SCO also proposes substantive changes to the text of Section “C. Recommendation of Expulsion.” SCO’s proposed changes exceed the scope of the Statement of Decision in *Pupil Expulsions from School*. Therefore, staff finds that the proposed amendments must be denied.

SCO also proposes a technical change in Section “D. Expulsion Hearing Procedural Requirements.” SCO’s proposed changes exceed the scope of the Statement of Decision in *Pupil Expulsions from School*. Therefore, staff finds that the proposed amendments must be denied.

### *Section V. Claim Preparation*

Section V is updated to make the language consistent with language in recently adopted parameters and guidelines.

### *Section VI. Claim Preparation: Reasonable Reimbursement Methodology*

A new section VI is added for claim preparation based on a reasonable reimbursement methodology proposed by the claimant for additional hearing costs based on specified cost allowances. The same language presented in the proposed parameters and guidelines for *Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses* settlement parameters and guidelines is included in the proposed consolidated parameters and guidelines.

### *Sections VII – IX*

The remaining sections are updated to language in recently adopted parameters and guidelines.

### *Section X. Remedies before the Commission*

SCO proposes that a citation be changed from Government Code section 17557, subdivision (d) to subdivision (a) in the section on “Remedies.” Staff finds that the proposed change is unnecessary because the original citation is correct, and therefore, staff finds that the proposed amendment must be denied.

### *Section XI. Legal and Factual Basis for the Parameters and Guidelines*

Staff proposes minor modifications to claimant's proposed language to cite the Statements of Decision on *Pupil Suspensions from School*, *Pupil Expulsion Appeals*, and *Pupil Expulsions from School*, as modified pursuant to the Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates*.

**Staff Recommendation**

Staff recommends that the Commission adopt claimant's proposed amendment of consolidated parameters and guidelines for *Pupil Suspensions from School*, *Pupil Expulsions from School*, and *Pupil Expulsion Appeals*, as modified by staff, effective Ju8ly 1, 2006.

Staff also recommends the Commission authorize staff to make technical, non-substantive changes as may be necessary.

# CLAIMANT'S PROPOSED AMENDMENT OF PARAMETERS AND GUIDELINES, AS MODIFIED BY COMMISSION STAFF

## PUPIL SUSPENSIONS, EXPULSIONS, AND EXPULSION APPEALS

### *Pupil Suspensions from School - CSM-4456*

Education Code section 48911, subdivisions (b) and (e)

Statutes 1977, Chapter 965; Statutes 1978, Chapter 668

Statutes 1980, Chapter 73; Statutes 1983, Chapter 498

Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

~~Chapter 965, Statutes of 1977, Chapter 668, Statutes of 1978~~

~~Chapter 73, Statutes of 1980, Chapter 498, Statutes of 1983~~

~~Chapter 856, Statutes of 1985, and Chapter 134, Statutes of 1987~~

### *Pupil Expulsions from School - CSM-4455*

Education Code Sections 48915, subdivisions (a) and (b),

48915.1, 48915.2, 48916 and 48918

Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;

Statutes 1978, Chapter 668; Statutes 1982, Chapter 318;

Statutes 1983, Chapter 498; Statutes 1984, Chapter 622;

Statutes 1987, Chapter 942; Statutes 1990, Chapter 1231;

Statutes 1992, Chapter 152; Statutes 1993, Chapters 1255, 1256; 1257; and,

Statutes 1994, Chapter 146

### *Pupil Expulsion Appeals - CSM-4463*

Education Code Sections 48919, 48921-48924

Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;

Statutes 1978, Chapter 668; and Statutes 1983, Chapter 498

~~Chapter 1253, Statutes of 1975, Chapter 965, Statutes of 1977~~

~~Chapter 668, Statutes of 1978, and Chapter 498, Statutes of 1983~~

## I. SUMMARY OF THE SOURCE OF THE MANDATES

### A. Pupil Suspensions from School

~~Chapter 965, Statutes of 1977, added former Education Code section 48903, subdivision (b) and imposed a new requirement for the teacher or supervisor who referred the pupil to the principal for suspension from school to participate in the pre-suspension conference between the pupil and the principal (or the principal's designee), whenever practical. Chapter 668, Statutes of 1978 and Chapter 73, Statutes of 1980, amended former Education Code section 48903, subdivision (b) and added "school employee" to the list of potential participants in the pre-suspension conference. Education Code section 48903 was repealed by Chapter 498, Statutes of 1983, and substantially the same requirements were moved to new Education Code section 48911, subdivision (b). The 1983 amendment authorized the school~~



~~superintendent to suspend pupils from school and to conduct the informal conference. In 1985, Chapter 856, Statutes of 1985 added a definition for the principal's designee.~~

~~Chapter 134, Statutes of 1987, amended Education Code section 48911, subdivision (e), to add a new requirement for a school district employee to report the cause of a pupil's suspension to the school district governing board or superintendent.~~

~~Chapter 1255, Statutes of 1993, amended Education Code section 48915, subdivision (b), to add a new requirement for the principal or superintendent of a school district to immediately suspend "any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds." Chapter 1256, Statutes of 1993, amended Education Code section 48918, subdivision (b), limiting the requirement for immediate suspensions to "any pupil found to be in possession of a firearm at school or at a school activity off school grounds."~~

## **B. Pupil Expulsions**

~~Chapter 498, Statutes of 1983 added and Chapters 1255 and 1256, Statutes of 1993 amended Education Code section 48915, subdivisions (a) and (b), which imposed a new requirement for school district principals and superintendents to recommend expulsion of pupils to their governing boards if the pupil committed one of the following offenses:~~

- ~~•Causing serious physical injury to another person, except in self defense;~~
- ~~•Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;~~
- ~~•Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;~~
- ~~•Robbery or extortion.~~

~~Chapter 1255, Statutes of 1993 amended Education Code section 48915 adding a new requirement for governing boards to either expel or recommend admission to an alternative education program if a pupil was found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds. This provision was in effect from October 11, 1993 through December 31, 1993. Chapter 1256, Statutes of 1993 amended Education Code section 48915, subdivision (b), to limit expulsion or recommendation of an alternative education program to any pupil in possession of a firearm at school or at a school activity off school grounds. Chapter 1256 became effective on January 1, 1994.~~

~~Chapter 1253, Statutes of 1975, Chapter 965, Statutes of 1977, Chapter 668, Statutes of 1978, Chapter 318, Statutes of 1982, Chapter 498, Statutes of 1983, Chapter 1231, Statutes of 1990, and Chapter 146, Statutes of 1994, added or amended the new requirement found in Education Code section 48918 for school district governing boards to adopt rules and regulations for the expulsion of pupils, which must include the specific procedures set forth in section 48918.~~

~~Chapter 1253, Statutes of 1975, Chapter 965, Statutes of 1977, and Chapter 1231, Statutes of 1990, added or amended the new requirement found in Education Code section 48918, subdivision (b) for the school district to include in the written expulsion hearing notice to the pupil and the pupil's parent or guardian:~~

- (1) a copy of the disciplinary rules of the district that relate to the alleged violation;
- (2) notice of the parent's, guardian's or pupil's obligation pursuant to Education Code section 48915.1, subdivision (b), upon the pupil's enrollment in a new school district, to inform that district of the expulsion; and
- (3) notice of the right of the pupil or pupil's parent or guardian to inspect and obtain copies of all documents to be used at the expulsion hearing.

Chapter 1253, Statutes of 1975, and Chapter 1231, Statutes of 1990, added or amended the new requirement found in Education Code section 48918, subdivision (i) for school districts to send to the pupil or the pupil's parent or guardian:

- (1) written notice of any decision to expel or suspend enforcement of an expulsion order during a period of probation;
- (2) notice of the right to appeal the expulsion to the county board of education; and
- (3) notice of the parent's, guardian's or pupil's obligation pursuant to Education Code section 48915.1, subdivision (b), upon the pupil's enrollment in a new school district, to inform that district of the expulsion.

Chapter 965, Statutes of 1977 amended former Education Code section 48914, subdivision (g) to add a new requirement for the governing board to maintain a record of each expulsion, including the cause thereof. Chapter 498, Statutes of 1983 moved this provision to new Education Code section 48915, subdivision (j), and added a new requirement that the expulsion order and the causes therefore be recorded in the pupil's mandatory interim record and that this record be forwarded, upon request, to any school in which the pupil subsequently enrolls.

Chapter 489, Statutes of 1983, added Education Code section 48916, which imposed a new requirement for school district governing boards to set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when an expelled pupil may apply for readmission. Section 48916 also requires school districts to adopt rules and regulations for the readmission procedure, and to make these rules and regulations available to the pupil and the pupil's parent or guardian when the expulsion order is entered.

Chapter 942, Statutes of 1987, added Education Code section 48915.1, which imposed a new requirement that school boards conduct a hearing if a pupil who was expelled from another school district poses a continuing threat to the school district's pupils or employees. This section also required the expelling school district to respond to a request for information regarding a recommendation for expulsion by the receiving school district. Chapter 1231, Statutes of 1990 and Chapter 1257, Statutes of 1993, amended Education Code section 48915.1 and Chapter 1257, Statutes of 1993 moved the hearing requirements for pupils expelled for certain offenses from Education Code section 48915.1 to new Education Code section 48915.2.

### C. Pupil Expulsion Appeals

Chapter 1253, Statutes of 1975 added former Education Code sections 10609 through 10609.4 regarding expulsions and expulsion appeals. Chapter 1010 of the Statutes of 1976 reenacted the Education Code and renumbered these sections as Education Code sections

~~48915 through 48920. These sections were amended by Chapter 965 of the Statutes of 1977 and by~~

~~Chapter 668 of the Statutes of 1978. Chapter 498, Statutes of 1983 repealed all previous Education Code sections regarding expulsions and expulsion appeals and added new sections 48919 through 48924. These sections require county boards of education to: adopt rules and regulations establishing procedures for expulsion appeals; notify persons of the requirements for filing the appeal, notify the parties of the acceptance of the filed appeal, the date of the hearing, the requirement for the appellant to provide transcript of the school district expulsion hearing record, and the procedures for the conduct of the hearing; conduct the hearing within 20 schooldays and render a decision within 3 schooldays; remand the matter to the school district governing board, or conduct a hearing de nova if the county board of education determines that there is relevant and material evidence which should be considered; and notify the parties of the final and binding order. School districts are required to participate in the county board appeal process.~~

## **H. COMMISSION ON STATE MANDATES DECISIONS**

### **I. Summary of the Mandates [All text updated]**

These consolidated parameters and guidelines address the following three test claim decisions:

#### *A. Pupil Suspensions from School*

On December 19, 1996, the Commission on State Mandates adopted its Statement of Decision determining that certain provisions of Education Code section 48911, subdivisions (b) and (e) impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The mandate is limited to the following reimbursable activities for suspensions based upon (1) possession of a firearm (October 11, 1993 to present), and (2) possession of a knife or explosive October 11, 1993 to December 31, 1993).

- The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable. (Ed. Code, § 48911, subd. (b).)
- A report of the cause of each school suspension to the district board (Ed. Code, § 48911, subdivision (e).)

#### *B. Pupil Expulsions from School*

On May 26, 1997, the Commission on State Mandates adopted its Statement of Decision, and on May 26, 2005, adopted its Amended Statement of Decision pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859. finding that certain provisions of the following Education Code sections impose a new program or higher level of service for school districts within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

- Education Code section 48915, subdivision (a), as added by Statutes 1983, chapter 498 and amended by Statutes 1993, chapters 1255 and 1256.;

- Education Code section 48915, subdivision (b), as amended by Statutes 1993, chapter 1255 and 1256;
- Education Code section 48918 (opening paragraph and subds. (a), (b), (f), (g), (h), (i) & (j)), as added by Statutes 1975, chapter 1253 and amended by Statutes 1977, chapter 965, Statutes 1978, chapter 668, Statutes 1982, chapter 318, Statutes 1983, chapter 498, Statutes 1990, chapter 1231, and Statutes 1994, chapter 146;
- Education Code section 48916, as added by Statutes 1983, chapter 498 and amended by Statutes 1992, chapter 152;
- Education Code section 48915.1, as added by Statutes 1987, chapter 943 and amended by Statutes 1990, chapter 1231 and Statutes 1993, chapter 1257;
- Education Code section 48915.2, as added by Statutes 1993, chapter 1257.

The Commission further determined that certain of the foregoing sections imposed a new program or higher level of service only with respect to expulsion procedures instituted for certain specified offenses.

### *C. Expulsion Appeals*

On March 27, 1997, the Commission on State Mandates adopted its Statement of Decision finding that certain provisions of Education Code sections 48919 and 48921 through 48924 impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution for school districts and county boards of education to hear and decide pupil expulsion appeals.

The Commission determined that the following provisions applicable to all student expulsion appeals establish costs mandated by the state pursuant to Government Code section 17514 for county boards of education to:

- Adopt rules and regulations establishing procedures for expulsion appeals.
- Notify persons appealing a school district expulsion of the procedures for the conduct of the appeal, as part of the county board's notice to the pupil regarding the appeal.
- Review the appeal and the record of the expulsion hearing conducted by the governing board (including the written transcript of the hearing and supporting documents).
- Conduct the initial hearing on the appeal, if the county board of education decides in such hearing to grant a hearing de novo.
- By either personal service or certified mail, notify the pupil and the school district of the final and binding order of the county board of education,
- Preserve the record of appeal.

The Commission determined that, limited to those expulsions which were based upon Education Code section 48915, subdivision (b) (as amended by Stats. 1993, ch. 1255 and 1256), the following provisions establish costs mandated by the state pursuant to Government Code section 17514 for school districts to:

- Provide copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil or the pupil's parent or guardian, as follows:
  1. If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or

2. If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not “education records” as defined in 20 U.S.C. section 1232g(a)(4).<sup>1</sup>
3. Participate in the initial appeal hearing at the county board of education, if the county board decides in such hearing to grant a trial de novo.
4. If the county board of education remands the matter to the school district, send notice of hearing, conduct the hearing and render a decision in the remand hearing.
5. If ordered by the county board of education, expunge the district’s and the pupil’s records of the expulsion.

## **II. ELIGIBLE CLAIMANTS**

Any “school district”, as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

## **III. PERIOD OF REIMBURSEMENT**

These consolidated parameters and guidelines are operative for reimbursement claims filed for increased costs beginning July 1, 2006. Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years’ costs shall be submitted within 120 days of the issuance of the State Controller’s claiming instructions. If the total costs

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<sup>1</sup>The Federal Education Rights and Privacy Act of 1974 (“FERPA”) defines “education records” as those records, files, documents and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B)) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

Costs for *Pupil Suspensions, Expulsions, and Expulsion Appeals* (CSM-4456, 4455, 4463) that have been claimed for fiscal years 1993-1994 through 2004 2005-2006 as of the effective date of these parameters and guidelines pursuant to the State Controller's claiming instructions for Program 176 may not be claimed and are not reimbursable under these parameters and guidelines.

However, costs for *Reimbursement for costs for Pupil Suspensions, Expulsions, and Expulsion Appeals* for beginning with fiscal years 1993-1994-2006-2007 may be claimed for activities specified in section IV. Subsection E of these parameters and guidelines.

#### IV. REIMBURSABLE ACTIVITIES

For each eligible school district and county office of education, the direct and indirect costs of labor, materials and supplies, travel, and services incurred for the following mandate components are eligible for reimbursement:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VII of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to may claim and be reimbursed for increased costs for reimbursable activities identified below by either the actual cost method or by the reasonable reimbursement methodology for additional hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

#### A. ADOPTION AND REVISION OF RULES AND PROCEDURES

##### 1. County Boards of Education

- (a) Adopting rules and procedures for expulsion appeal hearings and revising those rules and procedures to conform to amendments of the statutory hearing requirements.

- (b) Printing and disseminating rules and procedures to each school district in the county.

2. School Districts and County Boards of Education

- (a) Adopting rules and procedures pertaining to pupil expulsions and revising those rules and procedures to conform to amendments of the statutory requirements.
- (b) Adopting rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916.
- (c) Printing and disseminating rules and procedures to each school site.

B. SUSPENSION CONFERENCE AND REPORT

If the suspension is for possession of a firearm ~~one of the following offenses and the offense occurred within the following dates:~~

Date of Offense	Offense
<del>October 11, 1993 to December 31, 1993</del>	<del>Possession of a firearm, knife of no reasonable use to the student or explosive.</del>
January 1, 1994 to Present	Possession of a firearm. <sup>2</sup>

Then the following activities are reimbursable:

1. Attendance at Informal Conference

The attendance of the teacher, supervisor or other school district employee who referred the pupil to the principal for suspension in the pre-suspension conference between the principal (or principal's designee) or superintendent and the pupil.

2. Reporting the Cause to the District Office

Reporting the cause of the suspension to the school district's superintendent or governing board in accordance with the regulations of the school district's governing board. Such report may be oral or written.

C. RECOMMENDATION OF EXPULSION

The preparation of a report to the school district governing board concerning the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- causing serious physical injury to another person, except in self defense;
- possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;

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<sup>2</sup> Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim

- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- robbery or extortion.

#### D. EXPULSION HEARING PROCEDURAL REQUIREMENTS

If the expulsion hearing is for one of the following offenses:

- causing serious physical injury to another person, except in self defense;
- possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 1053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis ; or
- robbery or extortion.

Then the following activities are reimbursable:

##### 1. Including in the notice of hearing to the pupil:

- (a) a copy of the disciplinary rules of the district that relate to the alleged violation;
- (b) a notice of the parent's, guardian's or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and
- (c) notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.

##### 2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:

- (a) if the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
- (b) if the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).

##### 3. Expulsion hearing costs:

###### (a) Preparation for Expulsion Hearing

Preparing and reviewing documents to be used during the expulsion hearing. Arranging hearing dates and assigning panel members and translators as needed.

###### (b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing.

###### (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board



Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.

(d) Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.

E. POST-EXPULSION PROCEDURES

If the expulsion hearing is for possession of a firearm ~~one of the following offenses and the offense occurred within the following dates:~~ then the following activities are reimbursable:

Date of Offense	Offense
<del>October 11, 1993 to December 31, 1993</del>	<del>Possession of a firearm, knife of no reasonable use to the student or explosive.</del>
January 1, 1994 to Present	Possession of a firearm. <sup>3</sup>

~~Then the following activities are reimbursable:~~

1. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity.
2. Maintaining a record of the expulsion, including the cause of the expulsion.
3. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record.
4. Forwarding the student's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school.

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<sup>3</sup> ~~Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re lettered section 48915, subdivision (b) as section 489 15, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim. See footnote 2.~~

## F. READMISSION PROCEDURES

If the governing board expelled a pupil for possession of a firearm, then the following activities are reimbursable:

Date of Offense	Offense
October 11, 1993 to December 31, 1993	Possession of a firearm, knife of no reasonable use to the student or explosive.
January 1, 1994 to Present	Possession of a firearm <sup>4</sup>

1. setting a date when the pupil may apply for readmission to a district school; and
2. providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian.

## G. APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil ("applicant") seeking application to a school district (the "receiving school district") has been expelled by another school district for any offense, ~~for one of the following offenses as specified below~~, and the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activities associated with the receiving district's hearing are reimbursable, as specified below:

July 1, 1993 to December 31, 1993	<ul style="list-style-type: none"><li>● <del>Causing serious physical injury to another person, except in self defense;</del></li><li>● <del>Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;</del></li><li>● <del>Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 1053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or</del></li><li>● <del>Robbery or extortion.</del></li><li>● <del></del></li></ul>
January 1, 1994 to Present	<del>For any offense.</del>

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<sup>4</sup> Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim. See footnote 2.

~~Then the following activities associated with the receiving district's hearing are reimbursable, as specified below:~~

1. Including in the notice of hearing to the applicant: (a) a copy of the hearing procedure rules of the receiving district; and (b) notice of the opportunity for the applicant or the applicant's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.
2. Allowing an applicant or applicant's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:
  - (a) if the requesting party is an applicant less than 18 years of age, or the parent or guardian of an applicant who is 18 years of age or older, all documents; or
  - (b) if the requesting party is the parent or guardian of an applicant under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).<sup>5</sup>
3. Determination by the governing board whether a pupil expelled by another school district would pose a danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion.
4. Maintaining a record of each admission denial, including the cause of the denial.
5. Notifying the applicant and the applicant's parent or guardian of the governing board's determination of whether the applicant poses a potential danger to the pupils or employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion.

#### H. RESPONDING TO REQUESTS FOR RECOMMENDATIONS

If the governing board expelled a pupil for possession of a firearm ~~one of the following offenses and the offense occurred within the following dates:~~

Date of Offense	Offense
<del>October 11, 1993 to December 31, 1993</del>	<del>Possession of a firearm, knife of no reasonable use to the student or explosive.</del>
<del>January 1, 1994 to Present.</del>	<del>Possession of a firearm.</del> <sup>6</sup>

and the expelled student applies for admission to another school district (the "receiving district") then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving

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<sup>5</sup> See footnote 1.

<sup>6</sup> ~~Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim. See footnote 2.~~

district's request for a recommendation regarding the admission of the applicant are reimbursable.

## I. EXPULSION APPEAL HEARINGS

### 1. County Boards of Education (applicable to all student expulsion appeals)

#### (a) Providing Notice to the Parties

(1) Notifying the pupil and the pupil's parent(s) or guardian(s) of the procedures for the appeal.

(2) Notifying the school district and pupil in writing of the final order of the county board of education, either by personal service or certified mail.

#### (b) Review of Hearing Record

Reviewing the filed appeal and the transcript and record of the hearing conducted by the school district governing board.

#### (c) Conducting Hearings

Conducting the initial appeal hearing and rendering a decision. Reimbursement for this component is limited to appeals for which the county board of education decides to grant a hearing de novo.

#### (d) Preserving Records

Preserving the record of appeal.

### 2. School Districts

If the governing board expelled a pupil for possession of a firearm then the following activities are reimbursable: ~~one of the following offenses and the offense occurred within the following dates:~~

Date of Offense	Offense
<del>October 11, 1993 to December 31, 1993</del>	<del>Possession of a firearm, knife of no reasonable use to the student or explosive.</del>
January 1, 1994 to Present.	Possession of a firearm. <sup>7</sup>

~~Then the following activities are reimbursable:~~

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<sup>7</sup> Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. 'This Chapter is the subject of another test claim See footnote 2.

(a) Providing Copies of Documents

- (1) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age.
- (2) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).<sup>8</sup>

(b) Participation In Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo,

(c) Remand Hearing

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing.

(d) Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education.

J. TRAINING

Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

VI. CLAIM PREPARATION

~~Each reimbursement claim for costs incurred to comply with these mandates must be timely filed and set forth a listing of each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable component/activity identified in Section V. of this document.~~

~~SUPPORTING DOCUMENTATION~~

~~Claimed costs should be supported by the following information:~~

~~A. Direct Costs~~

~~Direct costs are defined as costs that can be specifically traced to goods, services, units, programs, activities, or functions.~~

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<sup>8</sup> See footnote 1

### 1. Employee Salaries and Benefits

Identify the employee(s) and their job classification, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

Reimbursement for personal services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and employer's contribution for social security, pension plans, insurance, and workers' compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

### 2. Materials and Supplies

Only expenditures which can be identified as a direct cost of these mandates can be claimed. List cost of materials and supplies which have been consumed or expended specifically for the purposes of these mandates. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimants. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

### 3. Contracted Services

Give the name(s) of the contractors(s) who performed the service(s). Describe the activities performed by each named contractor, and give the number of actual hours spent on the activities. Show the inclusive dates when services were performed and itemize all costs for those services.

### 4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of the travel, inclusive dates and time of travel, destination points, and travel costs.

### B. Indirect Costs

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.
2. County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

## **V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS**

Each of the following cost elements must be identified for each reimbursable activity identified in Section V, Reimbursable Activities, of this document. Each claimed reimbursable cost must

be supported by source documentation as described in Section V. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the ~~date when services were performed and itemize all costs for those services.~~ number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of the travel, inclusive dates and time of travel, destination points, and travel costs.~~ Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of the cost element A.1. Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section V of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable

activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### **B. Indirect Cost Rates**

Indirect costs are costs that ~~are~~ have been incurred for a common or joint purpose. These costs benefiting more than one cost objective and cannot be readily identified with a particular final cost objective. ~~program, and are not directly assignable to a particular department or program without efforts disproportionate to the results achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.~~ After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

### **VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY**

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D. 3 above.*

#### **A. Reasonable Reimbursement Methodology**

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

#### **Government Code Section 17518.5**

(a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) the total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.



- (2) for 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- (b) Whenever possible, a *reasonable reimbursement methodology* shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.
- (c) A reasonable reimbursement methodology may be developed by any of the following:
- (1) The Department of Finance.
  - (2) The Controller.
  - (3) An affected state agency.
  - (4) A claimant.
  - (5) An interested party.

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in D. 3, as described under Section IV, Reimbursable Activities, and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities, IV. D. 3 are *as follows*:

<u>Reimbursable Component</u>	<u>Uniform Cost Allowance Fiscal Year 2005-2006</u>
<u>IV. D.3 (a) Preparation for Expulsion Hearing</u>	<u>\$157.00</u>
<u>IV. D. 3 (b). Conducting Expulsion Hearing</u>	<u>\$196.16</u>
<u>IV. D 3 (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board</u>	<u>\$232.00</u>
<u>IV. D.3 (d) Record of Hearing</u>	<u>\$2.00</u>
<u>Total</u>	<u>\$587.16</u>

The State Controller's Office shall update these Uniform Cost Allowances by the Implicit Price Deflator referenced in Government Code section 17523<sup>9</sup>, for fiscal year 2006-2007 and each subsequent fiscal year.

## 2. Formula

Reimbursement of Activities IV. D. 3. (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D 3 (a), Preparation for Expulsion Hearing.

## VII. SUPPORTING DATA

~~For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. These documents must be made available on the request of the State Controller.~~

## VII. RECORD RETENTION

### A. Actual Costs

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>10</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

### B. Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs based on this reasonable reimbursement methodology filed by a local

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<sup>9</sup> ~~The uniform Cost Allowance is based on cost data collected by Los Angeles Unified School District and San Diego Unified School District that accounted for 20% of the statewide mandatory recommendations for expulsion in fiscal year 2003-2004. The data was obtained from Los Angeles and San Diego to calculate the proposed unit cost alliance since the reimbursable activities relating to expulsions are more prevalent at large urban school districts.~~

<sup>10</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

agency or school district pursuant to this chapter<sup>11</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

School districts must retain documentation which supports the total number of mandatory expulsions initiated and hearings conducted during the period subject to audit.

#### **VIII. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE**

~~The State Controller is directed to include in her claiming instructions the request for claimants to send an additional copy of the completed test claim specific form for each of the initial years' reimbursement claims by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, CA 95814, Facsimile Number: (916) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate.~~

#### **IX. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS**

~~Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., service fees collected, federal funds, other state funds, etc., shall be identified and deducted from this claim.~~

#### **VIII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

#### **IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

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<sup>11</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **X. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instruction and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## **XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statements of Decision on *Pupil Suspensions from School* and *Pupil Expulsion Appeals* are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claims. The administrative records, including the Statements of Decision, are on file with the Commission.

The Statement of Decision on *Pupil Expulsions from School*, as modified pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, and adopted on May 26, 2005, is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim and the Supreme Court decision. The administrative record, including the Statement of Decision, as modified, and the Supreme Court decision is on file with the Commission.

## **X. REQUIRED CERTIFICATION**

~~An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those cost mandated by the state contained herein.~~